

**REMARKS**

**I. Status of Claims**

Claims 19-33 are pending in the application, with claims 19 and 29 being independent.

Claims 19-23 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by USPGPUB 2006/0102398 to Mizuno (hereinafter “Mizuno”).

Claim 24 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mizuno, as applied to claim 19 above.

Claims 25-28 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mizuno, as applied to claim 19 above, and in further view of USP 6,378,637 to Ono (hereinafter “Ono”).

Claims 29-33 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mizuno.

The Applicant respectfully requests reconsideration of these rejections in view of the following remarks.

**II. The Instant Application and Mizuno are Commonly Assigned to Toyota Jidosha Kabushiki Kaisha**

The Applicant respectfully submits that Mizuno, which qualifies as prior art only under 35 USC § 102(e), shall not preclude patentability under 35 USC § 103(a) (see 103(c)), because the instant application and Mizuno were, at the time the claimed inventions were made, subject to an obligation of assignment to Toyota Jidosha Kabushiki Kaisha. *See* USPTO Patent Assignment database at Reel/Frame Nos. 017561/0456 and 016918/0793, respectively. Thus, Mizuno can be disqualified as prior art and cannot be used to support an obviousness rejection (and perfection of priority is not necessary because the PCT filing date is August 2, 2004, which is before the May 18, 2006 publication date (i.e., the 35 USC § 102(a) date) of Mizuno).

### III. Pending Claims

#### a. Independent Claim 19

Claim 19 stands rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Mizuno.

The Applicant respectfully submits that claim 19 recites, *inter alia*, "...wherein the fuel cell, the power storing device and the fuel supply source are arranged, in that sequence, from the front of the vehicle."

It is respectfully submitted that this language is not addressed in the 35 U.S.C. § 102(e) rejection set forth in the Office Action. This is most likely because in paragraph [0025] of Mizuno, it is stated that "[h]ydrogen cylinders 18, a fuel cell battery 30, a storage battery 40, and a power control unit (hereinafter, referred to as "PCU") 50 are ***disposed in that order*** in the direction from the rear to the front of the vehicle, within a space between the flat central portion 20a of the body frame 20 and a flat floor face F of the passenger compartment R1." (emphasis added)

Accordingly, the cylinders, fuel cell, storage battery, and PCU of Mizuno are arranged in a different order than that of the invention of claim 19, thus, Mizuno cannot anticipate the claim. "A claim is anticipated only if ***each and every element*** as set forth in the claim is found . . . in a single prior art reference." See M.P.E.P. § 2131 (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)).

Thus, the Applicant respectfully submits that the rejection under 35 U.S.C. § 102(e) is improper, and, should be withdrawn, or at the very least be rewritten as a 35 U.S.C. § 103(a).

It is respectfully submitted that if rewritten, for example, as a 35 U.S.C. § 103(a) rejection, Mizuno can be disqualified under 35 U.S.C. § 103(c) (as discussed herein above).

Thus, based on the foregoing reasons, it is respectfully submitted that claim 19 and its dependent claims are allowable over the cited references.

**b. Independent Claim 29**

Claims 29-33 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mizuno. Since Mizuno can be disqualified under 35 U.S.C. § 103(c), the Applicant respectfully requests withdrawal of this rejection and that claim 29 and its dependent claims are also allowable over the cited references.

**IV. Conclusion**

In light of the above discussion, the Applicant respectfully submits that the present application is in all aspects in allowable condition, and earnestly solicits favorable reconsideration and early issuance of a Notice of Allowance.

The Examiner is invited to contact the undersigned at (202) 220-4420 to discuss any matter concerning this application. The Office is authorized to charge any fees related to this communication to Deposit Account No. 11-0600.

Respectfully submitted,

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